

Arkansas Insurance Department

Bulletin 20-87

Replacement of Form SL-2 (Ed. 5/85) as an Exhibit to Rule and Regulation 24, with Form SL-2 (Ed. 10/87)

October 5, 1987

It has come to our attention that certain problems have resulted from surplus line brokers' compliance with newly enacted Act 456 of 1987, which amended Ark. Stat. Ann. § 66-2921, and with revised Rule and Regulation 24. This amendment required that the filing of each Form SL-2 be accompanied by full payment of the 4% tax. Although surplus line brokers will be expected to comply fully with the statute and regulation, there are certain situations in which compliance will not be strictly mandated. Enclosed is a new Form SL-2 (Ed. 10/87)¹ for your use. The reference to "foreign" business on the enclosed Form SL-2 (Ed. 10/87) as it applies to surplus line brokers means business which was procured by an out-of state originating agent, broker, or purchasing group broker who contacts an in-state broker, so that the in-state broker may report and pay the required surplus line tax.

Exceptions which will be considered are:

1. **Foreign Business:** Requests for tax reporting and payment services of an Arkansas surplus line broker are frequently made later than sixty (60) days following the end of the month in which the coverage was procured, thereby making it a virtual impossibility for the Arkansas surplus line broker to file a SL-2 and pay the required tax within the 60-day period.
2. **Endorsements:** Frequently an endorsement will be ordered months before the endorsement is actually issued by the surplus line company and/or its premium cost is known. By the time a surplus line company gets the request for the endorsement, processes it, and actually sends it with the premium information to the Arkansas broker, it may well be past the 60-day reporting period mandated by Arkansas law.
3. **Late Binders:** This situation is similar to the endorsement ordering procedure, in that binder will be issued and may often be extended beyond its original termination date. It may well take longer than the 60- day period for the broker to find out what the premium will be to report and pay the appropriate tax.
4. **Audits:** Many surplus line policies require that the insurer complete an audit after expiration of the policy term. In turn, the Arkansas surplus line broker must wait until the audit is completed to process premium refunds or collect additional premiums owed. The enclosed Form SL-2 (Ed. 10/87)¹ should allow the broker to document delayed reporting as to premium refunds and additional premium and tax collections due to audits to avoid statutory penalties.
5. **Excess Coverage:** Surplus line brokers often procure a surplus line policy which is excess to the insured's primary coverage. If the primary coverage is cancelled, the broker must also cancel the excess surplus line policy, to be effective on the date of cancellation of the primary policy. By the time the surplus line broker receives notice of cancellation on the primary policy, processes cancellation of the excess surplus line policy, and reports the premium refund on the Form SL-2 or SL-4, it may well be past the 60-day reporting period mandated by Arkansas law.

¹ See Rule and Regulation 24 in the NILS *Arkansas Regulations* volume.

ARKANSAS BULLETINS

In these instances, the Arkansas Insurance Department has determined that the Arkansas broker is not at fault and will therefore not be penalized.

Any and all foreign filings, endorsements or other documents, needed to prove to the Department's satisfaction that the requisite documentation was not received by the Arkansas broker in time for compliance with the law, should be stamped upon receipt by the Arkansas surplus line broker. These stamped documents should be kept on file for three (3) years after filing of the Form SL-4, so that, should the Insurance Department wish to inspect these records, they will clearly show the date received. Should this information or documentation be received by the broker through the United States Postal Service, then envelopes should be date-stamped and kept also. We do realize that much of this information is received through an electronically transmitted mechanism and so would not have accompanying envelopes. However, the hard copy print-out should be date-stamped upon receipt.

BULLETIN 20-87

Enclosed please find a newly-drafted Surplus Line Form SL-2, Affidavit of Broker (Ed. 10/87).¹ This affidavit contains all of the information from the previous forms; however, there are additional columns which will help the Department determine whether a waiver of the statutory fine is justified. There is now a separate column for indicating return premium amounts. "Premium" means simply the premium amount for the reported transaction. *After November 30, 1987, the old Affidavit of Broker, Form SL-2 (Ed. 5/85) will no longer be accepted by the Department.* All copies of the old Form SL-2 (Ed. 5/85) should be destroyed. The newly-drafted form enclosed will enable us to make a determination as to fine waivers without requiring a separate written explanation from the broker.

Once again, please note that the exceptions referred to herein are limited. Late filings or tax payments by an Arkansas broker for risks not falling within the exceptions listed above will be addressed with statutory fines.

Note: Act 456 requires a Form SL-2 filing in **addition** to the annual Form SL-4 filing. A final Form SL-2 must be filed. The information contained therein cannot simply be included in the SL-4 filing without a separate SL-2.

If you have any questions, please contact the Accounting Division of this Department at (501) 371-2605.

¹ See Rule and Regulation 24 in the NILS *Arkansas Regulations* volume.